



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1995

Mr. G. Mike Davis
State Fire Marshal
Texas Commission on Fire Protection
P.O. Box 2286
Austin, Texas 78768-2286

OR95-642

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34488.

The Texas Commission on Fire Protection (the "commission") received a request for "a copy of the initial investigative report and [the commission investigator's] investigation file" regarding a residential fire in Jasper County. You advise us that you have made some of the requested information available to the requestor. You contend, however, that the remaining information is excepted from required public disclosure under section 552.108 of the Government Code.

Section 552.108 provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure].

When an incident involving allegedly criminal conduct is still under active investigation or prosecution, any proper custodian of information that relates to the incident may invoke section 552.108. Open Records Decision Nos. 474 (1987), 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (listing factual information available to public).

You have submitted the requested information to our office and have marked the information you claim is excepted from required public disclosure under section 552.108. You state that the submitted information is part of an active investigation by the commission. Accordingly, except for the information deemed public by the *Houston Chronicle Publishing Co.* case, you may withhold the requested information under section 552.108. We agree that your markings comport with the holding in *Houston Chronicle Publishing Co.* and prior rulings by this office.

Pursuant to section 552.301 of the Government Code, the Office of the Attorney General concludes that the commission may rely on this ruling as a "previous determination" for requests to the commission for information relating to active investigations. Accordingly, except for information deemed open by the *Houston Chronicle Publishing Co.* case, the commission may withhold the records of its active investigations under section 552.108 of the Government Code.¹ The commission need not seek a decision from this office for future requests of this type.²

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

¹We remind you that section 552.108 is a discretionary exception under the act. See Gov't Code § 552.007. Therefore, the commission may choose to release to the public some or all of this information with impunity.

²We note that for future requests, the commission should rely on the marked documents submitted with this request as a guide for releasing information in accordance with this "previous determination."

Ref: ID# 34488

Enclosures: Marked documents

cc: Mr. Brent Sandlin
Claim Specialist
State Farm Insurance Companies
P.O. Box 6528
Texarkana, Texas 75505-6528
(w/o enclosures)